

SENATE NO. 593

AN ACT RELATIVE TO PROMOTING THE EFFICIENT USE OF HEALTH CARE REVENUES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

SECTION 1. Section 110 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following new subdivision (O):

(O). (a) Each insurer authorized to issue or deliver within the Commonwealth any general or blanket policy of insurance described in subdivision (A), (C), or (D) of this section shall expend the following percentage of its Massachusetts-associated revenue as its Massachusetts care share, as defined herein, for the purpose of providing health services to persons insured under such policies:

(1) The Massachusetts care share for an insurer with 50,000 or more persons insured for health coverage sold in the Commonwealth and that has been doing business in the Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-associated revenue, for each calendar year.

(2) The Massachusetts care share for an insurer with at least 25,000 but not more than 50,000 persons insured for health coverage sold in the Commonwealth and that has been doing

15 business in the Commonwealth for more than one year shall be no less than 85 percent of
16 Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of
17 Massachusetts-associated revenue, for each calendar year.

18 (b) Each insurer operating in the Commonwealth shall report annually to the Commissioner
19 its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums,
20 total health expenditures, Massachusetts-associated health expenditures, total non-health
21 expenditures, care share, and Massachusetts care share. Such information shall be reported on
22 forms provided by the Commissioner, which shall include all information required by the
23 National Association of Insurance Commissioners' "Health Maintenance Organization
24 Financial Report of Affairs and Conditions Form," and such other information as the
25 Commissioner shall deem relevant for determining compliance with the requirements of this
26 section. The Commissioner shall issue regulations specifying the methods for calculating the
27 information to be reported in accordance with this section. The Commissioner shall publish
28 annually the care share and the Massachusetts care share of each health maintenance
29 organization doing business in the Commonwealth. All written materials used for advertising
30 and marketing blanket or general policies of insurance to prospective insured persons or groups
31 shall include a statement of the insurer's care share and its Massachusetts care share.

32 (c) (1) Any insurer that fails to comply with the provisions of this section shall refund to
33 the persons insured by it a percentage of its Massachusetts-associated revenues equal to the
34 Massachusetts care share required by subsection (a) hereof for the calendar year less the
35 Massachusetts care share actually expended for the calendar year. The refund payable for any
36 calendar year shall be paid on or before April 30 of the next calendar year. An insurer that
37 reports a shortfall in its Massachusetts care share may, upon written notice to the

38 Commissioner, pay the refund owed by reducing the total premiums payable by its insureds for
39 the calendar year in which the shortfall is reported by an amount equal to the total shortfall.

40 (2) Each calendar year, the Commissioner shall audit the books and records of a
41 random sample of 10 percent of insurers that have more than 25,000 persons insured under
42 blanket or group insurance policies. The Commissioner may appoint an independent auditor to
43 conduct the audit, subject to the control and supervision of the Commissioner, and shall assess
44 each health maintenance organization a fee to pay the reasonable costs of such audit.

45 (3) The Commissioner shall prepare an annual budget of the costs of monitoring and
46 determining compliance with this section and such costs shall be paid by each insurer that has
47 done business in the Commonwealth for at least 5 years, on a prorata basis.

48 (d) (1) The knowing violation of any of the requirements of this section by any insurer shall
49 be punished by imprisonment for not more than five years or by a fine of not more than twenty
50 percent of Massachusetts-associated revenue.

51 (2) A violation of this section shall also be deemed to be a violation of chapter ninety-
52 three A.

53 (e) For purposes of this section, the following terms shall have the following meanings:

54 (1) "Total revenues" means all income and revenues, however derived, including, but
55 not limited to, revenues derived from premium sales, interest, dividends, and other investments,
56 but excluding only income in the form of compensation for administrative services pursuant to a
57 contract or other arrangement for rendering administrative services only to self-funded health
58 plans that are not owned or controlled by the insurer.

59 (2) “Massachusetts-associated revenue” means Massachusetts premiums plus a
60 proportion of total revenues less total premiums, where said proportion equals Massachusetts
61 premiums divided by total premiums.

62 (3) “Total premiums” means all revenue derived from the sale within or outside the
63 Commonwealth of blanket or group insurance policies for coverage for health services.

64 (4) “Massachusetts premiums” means all revenue derived from the sale in
65 Massachusetts of blanket and group insurance policies for health services.

66 (5) “Total health expenditures” means all expenditures by or on behalf of an insurer for
67 the purchase of health services or to reimburse an insured for the purchase of health services,
68 including physicians and other professional health services, hospital and other health facility
69 services, pharmacy services, health education, and capital expenditures for the construction or
70 rehabilitation of medical facilities for the delivery of health care.

71 (6) “Massachusetts-associated health expenditures” means that proportion of total
72 health expenditures paid for the delivery of health services rendered to members pursuant to a
73 blanket or group insurance policy sold in the Commonwealth by the insurer.

74 (7) “Care share” means the percentage obtained by dividing total health expenditures by
75 total revenue for a calendar year.

76 (8) “Massachusetts care share” means the percentage obtained by dividing
77 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
78 calendar year.

79 SECTION 2. Chapter 176B of the General Laws, as appearing in the 1996 Official
80 Edition, is hereby amended by adding the following new Section 12A:
81 12A. Expenditures for health services.

(a) Each medical service organization licensed to operate in the Commonwealth shall expend the following percentage of its Massachusetts-associated revenue as its Massachusetts care share, as defined herein, for the purpose of providing health services to its members:

(1) The Massachusetts care share for a medical service corporation with 50,000 or more subscribers for health coverage sold in the Commonwealth and that has been doing business in the Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-associated revenue, for each calendar year.

(2) The Massachusetts care share for a medical service corporation with at least 25,000 but not more than 50,000 subscribers for health coverage sold in the Commonwealth and that has been doing business in the Commonwealth for more than one year shall be no less than 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of Massachusetts-associated revenue, for each calendar year.

(b) Each medical service corporation shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care share, and Massachusetts care share. Such information shall be reported on forms provided by the Commissioner, which shall include all information required by the National Association of Insurance Commissioners' "Health Maintenance Organization Financial Report of Affairs and Conditions Form," and such other information as the Commissioner shall deem relevant for determining compliance with the requirements of this section. The Commissioner shall issue regulations specifying the methods for calculating the information to be reported in accordance with this section. The Commissioner shall publish

105 annually the care share and the Massachusetts care share of the medical service corporation
106 doing business in the Commonwealth. All written materials used for advertising and marketing
107 health services contracts to prospective subscribers or groups of subscribers shall include a
108 statement of the corporation's care share and its Massachusetts care share.

109 (c) (1) Any medical service corporation that fails to comply with the provisions of this
110 section shall refund to its subscribers a percentage of its Massachusetts-associated revenues
111 equal to the Massachusetts care share required by subsection (a) hereof for the calendar year
112 less the Massachusetts care share actually expended for the calendar year. The refund payable
113 for any calendar year shall be paid on or before April 30 of the next calendar year. A
114 corporation that reports a shortfall in its Massachusetts care share may, upon written notice to
115 the Commissioner, pay the refund owed by reducing the total premiums payable by its
116 subscribers for the calendar year in which the shortfall is reported by an amount equal to the
117 total shortfall.

118 (2) Each calendar year, the Commissioner shall audit the books and records of a
119 random sample of 10 percent of medical service corporations that have more than 25,000
120 members. The Commissioner may appoint an independent auditor to conduct the audit, subject
121 to the control and supervision of the Commissioner, and shall assess each medical service
122 corporation a fee to pay the reasonable costs of such audit.

123 (3) The Commissioner shall prepare an annual budget of the costs of monitoring and
124 determining compliance with this section and such costs shall be paid by each medical service
125 corporation that has done business in the Commonwealth for at least 5 years, on a prorata basis.

126 (d) (1) The knowing violation of any of the requirements of this section by any medical
127 service corporation shall be punished by imprisonment for not more than five years or by a fine
128 of not more than twenty percent of Massachusetts-associated revenue.

129 (2) A violation of this section shall also be deemed to be a violation of chapter ninety-
130 three A.

131 (e) For purposes of this section, the following terms shall have the following meanings:

132 (1) "Total revenues" means all income and revenues, however derived, including, but
133 not limited to, revenues derived from premium sales, interest, dividends, and other investments,
134 but excluding only income in the form of compensation for administrative services pursuant to a
135 contract or other arrangement for rendering administrative services only to self-funded health
136 plans that are not owned or controlled by the corporation.

137 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
138 proportion of total revenues less total premiums, where said proportion equals Massachusetts
139 premiums divided by total premiums.

140 (3) "Total premiums" means all revenue derived from the sale within or outside the
141 Commonwealth of medical service contracts and contracts showing evidence of coverage for
142 health services.

143 (4) "Massachusetts premiums" means all revenue derived from the sale in
144 Massachusetts of medical service contracts and contracts showing evidence of coverage for
145 health services.

146 (5) "Total health expenditures" means all expenditures by or on behalf of a medical
147 service corporation for the purchase of health services, including physicians and other
148 professional health services, hospital and other health facility services, pharmacy services,

149 health education, and capital expenditures for the construction or rehabilitation of medical
150 facilities for the delivery of health care.

151 (6) “Massachusetts-associated health expenditures” means that proportion of total
152 health expenditures paid for the delivery of health services rendered to members pursuant to
153 medical service contracts sold in the Commonwealth by the medical service corporation.

154 (7) “Care share” means the percentage obtained by dividing total health expenditures by
155 total revenue for a calendar year.

156 (8) “Massachusetts care share” means the percentage obtained by dividing
157 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
158 calendar year.

159 SECTION 3. Chapter 176G of the General Laws, as appearing in the 1996 Official
160 Edition, is hereby amended by adding the following new Section 6A:

161 6A. Expenditures for health services.

162 a) Each organization licensed to operate a health maintenance organization in the
163 Commonwealth shall expend the following percentage of its Massachusetts-associated revenue
164 as its Massachusetts care share, as defined herein, for the purpose of providing health services to
165 its members:

166 (1) The Massachusetts care share for a health maintenance organization with 50,000 or
167 more members in health coverage sold in the Commonwealth and that has been doing business
168 in the Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-
169 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
170 associated revenue, for each calendar year.

171 (2) The Massachusetts care share for a health maintenance organization with at least
172 25,000 but not more than 50,000 members in health coverage sold in the Commonwealth and
173 that has been doing business in the Commonwealth for more than one year shall be no less than
174 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed
175 15 percent of Massachusetts-associated revenue, for each calendar year.

176 (b) Each organization operating a health maintenance organization in the Commonwealth
177 shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue,
178 total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated
179 health expenditures, total non-health expenditures, care share, and Massachusetts care share.
180 Such information shall be reported on forms provided by the Commissioner, which shall include
181 all information required by the National Association of Insurance Commissioners' "Health
182 Maintenance Organization Financial Report of Affairs and Conditions Form," and such other
183 information as the Commissioner shall deem relevant for determining compliance with the
184 requirements of this section. The Commissioner shall issue regulations specifying the methods
185 for calculating the information to be reported in accordance with this section. The
186 Commissioner shall publish annually the care share and the Massachusetts care share of each
187 health maintenance organization doing business in the Commonwealth. All written materials
188 used for advertising and marketing health maintenance contracts to prospective members or
189 groups of members shall include a statement of the health maintenance organization's care share
190 and its Massachusetts care share.

191 (c) (1) Any organization that fails to comply with the provisions of this section shall refund
192 to its members a percentage of its Massachusetts-associated revenues equal to the
193 Massachusetts care share required by subsection (a) hereof for the calendar year less the

194 Massachusetts care share actually expended for the calendar year. The refund payable for any
195 calendar year shall be paid on or before April 30 of the next calendar year. A health
196 maintenance organization that reports a shortfall in its Massachusetts care share may, upon
197 written notice to the Commissioner, pay the refund owed by reducing the total premiums
198 payable by its members for the calendar year in which the shortfall is reported by an amount
199 equal to the total shortfall.

200 (2) Each calendar year, the Commissioner shall audit the books and records of a
201 random sample of 10 percent of health maintenance organizations that have more than 25,000
202 members. The Commissioner may appoint an independent auditor to conduct the audit, subject
203 to the control and supervision of the Commissioner, and shall assess each health maintenance
204 organization a fee to pay the reasonable costs of such audit.

205 (3) The Commissioner shall prepare an annual budget of the costs of monitoring and
206 determining compliance with this section and such costs shall be paid by each health
207 maintenance organization that has done business in the Commonwealth for at least 5 years, on a
208 prorata basis.

209 (d) (1) The knowing violation of any of the requirements of this section by any carrier or
210 health maintenance organization shall be punished by imprisonment for not more than five years
211 or by a fine of not more than twenty percent of Massachusetts-associated revenue.

212 (2) A violation of this section shall also be deemed to be a violation of chapter ninety-
213 three A. [§9 of 176G makes HMOs subject to 93A]

214 (e) For purposes of this section, the following terms shall have the following meanings:

215 (1) "Total revenues" means all income and revenues, however derived, including, but
216 not limited to, revenues derived from premium sales, interest, dividends, and other investments,

217 but excluding only income in the form of compensation for administrative services pursuant to a
218 contract or other arrangement for rendering administrative services only to self-funded health
219 plans that are not owned or controlled by the health maintenance organization.

220 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
221 proportion of total revenues less total premiums, where said proportion equals Massachusetts
222 premiums divided by total premiums.

223 (3) "Total premiums" means all revenue derived from the sale within or outside the
224 Commonwealth of health maintenance contracts and contracts showing evidence of coverage
225 for health services.

226 (4) "Massachusetts premiums" means all revenue derived from the sale in
227 Massachusetts of health maintenance contracts and contracts showing evidence of coverage for
228 health services.

229 (5) "Total health expenditures" means all expenditures by or on behalf of a health
230 maintenance organization for the purchase of health services, including physicians and other
231 professional health services, hospital and other health facility services, pharmacy services,
232 health education, and capital expenditures for the construction or rehabilitation of medical
233 facilities for the delivery of health care.

234 (6) "Massachusetts-associated health expenditures" means that proportion of total
235 health expenditures paid for the delivery of health services rendered to members pursuant to
236 health maintenance contracts sold in the Commonwealth by the health maintenance
237 organization.

238 (7) "Care share" means the percentage obtained by dividing total health expenditures by
239 total revenue for a calendar year.

240 (8) "Massachusetts care share" means the percentage obtained by dividing
241 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
242 calendar year.

243 SECTION 4 Chapter 176G of the General Laws, as appearing in the 2004 Official Edition, is
244 hereby amended by adding the following new Section 3B:

245 3B. Expenditures for health services.

246 (a) Each organization that enters into a preferred provider arrangement in the
247 Commonwealth pursuant to this chapter shall expend the following percentage of its
248 Massachusetts-associated revenue as its Massachusetts care share, as defined herein, for the
249 purpose of providing health services to its members:

250 (1) The Massachusetts care share for an organization with 50,000 or more members in
251 health coverage sold in the Commonwealth and that has been doing business in the
252 Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-
253 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
254 associated revenue, for each calendar year.

255 (2) The Massachusetts care share for an organization with at least 25,000 but not more
256 than 50,000 members in health coverage sold in the Commonwealth and that has been doing
257 business in the Commonwealth for more than one year shall be no less than 85 percent of
258 Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of
259 Massachusetts-associated revenue, for each calendar year.

260 (b) Each organization operating in the Commonwealth shall report annually to the
261 Commissioner its total revenues, Massachusetts-associated revenue, total premiums,
262 Massachusetts premiums, total health expenditures, Massachusetts-associated health

263 expenditures, total non-health expenditures, care share, and Massachusetts care share. Such
264 information shall be reported on forms provided by the Commissioner, which shall include all
265 information required by the National Association of Insurance Commissioners' "Health
266 Maintenance Organization Financial Report of Affairs and Conditions Form," and such other
267 information as the Commissioner shall deem relevant for determining compliance with the
268 requirements of this section. The Commissioner shall issue regulations specifying the methods
269 for calculating the information to be reported in accordance with this section. The
270 Commissioner shall publish annually the care share and the Massachusetts care share of each
271 organization doing business in the Commonwealth. All written materials used for advertising
272 and marketing preferred provider arrangements to prospective members or groups of members
273 shall include a statement of the organization's care share and its Massachusetts care share.

274 (c) (1) Any organization that fails to comply with the provisions of this section shall refund
275 to its members a percentage of its Massachusetts-associated revenues equal to the
276 Massachusetts care share required by subsection (a) hereof for the calendar year less the
277 Massachusetts care share actually expended for the calendar year. The refund payable for any
278 calendar year shall be paid on or before April 30 of the next calendar year. An organization
279 that reports a shortfall in its Massachusetts care share may, upon written notice to the
280 Commissioner, pay the refund owed by reducing the total premiums payable by its members for
281 the calendar year in which the shortfall is reported by an amount equal to the total shortfall.

282 (2) Each calendar year, the Commissioner shall audit the books and records of a
283 random sample of 10 percent of organizations that have more than 25,000 members. The
284 Commissioner may appoint an independent auditor to conduct the audit, subject to the control

285 and supervision of the Commissioner, and shall assess each organization a fee to pay the
286 reasonable costs of such audit.

287 (3) The Commissioner shall prepare an annual budget of the costs of monitoring and
288 determining compliance with this section and such costs shall be paid by each organization that
289 has done business in the Commonwealth for at least 5 years, on a prorata basis.

290 (d) (1) The knowing violation of any of the requirements of this section by any organization
291 shall be punished by imprisonment for not more than five years or by a fine of not more than
292 twenty percent of Massachusetts-associated revenue.

293 (2) A violation of this section shall also be deemed to be a violation of chapter ninety-
294 three A.

295 (e) For purposes of this section, the following terms shall have the following meanings:

296 (1) "Total revenues" means all income and revenues, however derived, including, but
297 not limited to, revenues derived from premium sales, interest, dividends, and other investments,
298 but excluding only income in the form of compensation for administrative services pursuant to a
299 contract or other arrangement for rendering administrative services only to self-funded health
300 plans that are not owned or controlled by the organization.

301 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
302 proportion of total revenues less total premiums, where said proportion equals Massachusetts
303 premiums divided by total premiums.

304 (3) "Total premiums" means all revenue derived from the sale within or outside the
305 Commonwealth of health services contracts and contracts showing evidence of coverage for
306 health services.

307 (4) “Massachusetts premiums” means all revenue derived from the sale in
308 Massachusetts of health services contracts and contracts showing evidence of coverage for
309 health services.

310 (5) “Total health expenditures” means all expenditures by or on behalf of an
311 organization for the purchase of health services, including physicians and other professional
312 health services, hospital and other health facility services, pharmacy services, health education,
313 and capital expenditures for the construction or rehabilitation of medical facilities for the
314 delivery of health care.

315 (6) “Massachusetts-associated health expenditures” means that proportion of total
316 health expenditures paid for the delivery of health services rendered to members pursuant to
317 health service contracts sold in the Commonwealth by the organization.

318 (7) “Care share” means the percentage obtained by dividing total health expenditures by
319 total revenue for a calendar year.

320 (8) “Massachusetts care share” means the percentage obtained by dividing
321 Massachusetts-associated health expenditures by Massachusetts-associated revenue
322 for a calendar year.